IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RP.No. 30 of 2007()
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AGAINST THE JUDGEMENT/ORDER IN SA.405/1992 Dated 13/01/2005
AS.16/1986 of ADDL.SUB COURT, IRINJALAKUDA

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REVIEW PETITIONERS/ADDL.RESPONDENTS 2 TO 6 :
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1. SATHYAN, S/O. DECEASED BALAN,
KODAKARA VILLAGE, P.O. MANAKULANGARA, THRISSUR DISTRICT

2. SATHEERTHAN, S/O.DECEASED BALAN OF -DO-

3. SANTHOSH -DO-

4. SYAMALA, W/O.SUKU, MALAYADAN HOUSE,
P.O. MANAKULANGARA, THRISSUR DISTRICT

5. SOBHANA, W/O.CHANDRAN, PULIKKAPARAMBIL HOUSE,
P.O. MANAKULANGARA, THRISSUR DISTRICT

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:
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1. RAJAN, S/O. ORAMBATH PARAMBIL VELUNNY,
KODAKARA VILLAGE, MUKUNDAPURAM TALUK

2. SADANANDAN ALIAS ANANDAN,
S/O. ORAMBATH PARAMBIL VELUNNY,
KODAKARA VILLAGE, MUKUNDAPURAM TALUK

3. SURENDRAN, S/O. ORAMBATH PARAMBIL RAVUNNY,
KODAKARA VILLAGE, MUKUNDAPURAM TALUK

4. KALLIANI, W/O.ORAMBATH PARAMBIL VELUNNY,
KODAKARA VILLAGE, MUKUNDAPURAM TALUK

BY ADV. SRI.P.V.CHANDRAMOHAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

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**R.P. NO. 30 of 2007**
**in S.A. 405 of 1992**

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**Dated, this the 2nd day of August 2007**

**ORDER**

This is a petition to review the judgment dated 13-1-2005 in the above second appeal which was allowed by setting aside the judgment and decree passed by the lower appellate court and restoring those passed by the trial court.

2. The learned counsel for the review petitioner, placing strong reliance on the decision reported in **Commissioner, Hindu Religious and Charitable Endowment v. Shanmugama- 2005 (2) KLT SN Case No. 36** contended that the Second Appeal was allowed without considering the substantial question of law, if any, which arose and without the involvement of a substantial question of law the Second Appeal could have been allowed and the judgment of the lower appellate court could not have been interfered with.

3. I cannot agree. No doubt, the substantial question of law which were involved in the Second Appeal have not been enumerated in the judgment. But the appeal was admitted on the following substantial questions of law:-

a) Cannot an easement by express grant be released by implication ?

b) Is not section 38 of the Indian Easement Act applicable to an easement by express grant ?

c) Is not the burden of proving an easement by necessity upon the person who claims it ?

d) Is not Ext.B2 a document releasing the right of easement by the vender ?

e) Cannot an easement by express grant be lost by abandonment ?

It was in respect of those questions that the Second appeal was heard and disposed of . The revision petitioner also had adequate opportunity to address this Court regarding the questions so formulated and the Second Appeal was disposed of with reference to the legal question regarding the easement of necessity arising out of the admitted factual position. There was no disagreement with the lower appellate court on the facts. The Second Appeal was disposed of without interfering with the finding of facts but only on the basis of the rights emanating on account of the severance of the respective tenements. I do not, therefore, find any ground for interference.

This Review Petition is dismissed accordingly.

**V. RAMKUMAR,**
**(JUDGE)**

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